



## ENVIRONMENTAL PROTECTION AGENCY

### 40 CFR Part 52

[EPA-R04-OAR-2020-0102; FRL-10021-39-Region 4]

#### Air Plan Approval; KY; Jefferson County

#### Gasoline Loading Facilities at Existing Bulk Terminals and New Bulk Plants

**AGENCY:** Environmental Protection Agency (EPA).

**ACTION:** Final rule.

**SUMMARY:** The Environmental Protection Agency (EPA) is approving revisions to the Jefferson County portion of the Kentucky State Implementation Plan (SIP), submitted by the Commonwealth of Kentucky, through the Energy and Environment Cabinet (Cabinet) on September 5, 2019. The revisions were submitted by the Cabinet on behalf of the Louisville Metro Air Pollution Control District (District) and include amendments related to the standards for existing gasoline loading facilities at bulk terminals and new gasoline loading facilities at bulk plants. The amendments to these standards replace a requirement for gasoline tank trucks to possess a valid Kentucky pressure vacuum test sticker with a requirement for specific vapor tightness testing and recordkeeping procedures, clarify rule applicability, and remove language stating that a pressure measuring device will be supplied by the District. EPA is approving the revisions because they are consistent with the Clean Air Act (CAA or Act).

**DATES:** This rule is effective [Insert date 30 days after date of publication in the Federal Register].

**ADDRESSES:** EPA has established a docket for this action under Docket Identification No. EPA-R04-OAR-2020-0102. All documents in the docket are listed on the [www.regulations.gov](https://www.regulations.gov) website. Although listed in the index, some information may not be publicly available, i.e., Confidential Business Information or other information whose disclosure

is restricted by statute. Certain other material, such as copyrighted material, is not placed on the Internet and will be publicly available only in hard copy form. Publicly available docket materials can either be retrieved electronically via [www.regulations.gov](http://www.regulations.gov) or in hard copy at the at the Air Regulatory Management Section, Air Planning and Implementation Branch, Air and Radiation Division, U.S. Environmental Protection Agency, Region 4, 61 Forsyth Street, SW, Atlanta, Georgia 30303-8960. EPA requests that if at all possible, you contact the person listed in the **FOR FURTHER INFORMATION CONTACT** section to schedule your inspection. The Regional Office's official hours of business are Monday through Friday 8:30 a.m. to 4:30 p.m., excluding Federal holidays.

**FOR FURTHER INFORMATION CONTACT:** Sarah LaRocca, Air Regulatory Management Section, Air Planning and Implementation Branch, Air and Radiation Division, U.S. Environmental Protection Agency, Region 4, 61 Forsyth Street, SW, Atlanta, Georgia 30303-8960. The telephone number is (404) 562-8994. Ms. LaRocca can also be reached via electronic mail at [larocca.sarah@epa.gov](mailto:larocca.sarah@epa.gov).

## **SUPPLEMENTARY INFORMATION:**

### **I. EPA's Action**

EPA is approving changes to Regulation 6.21, *Standard of Performance for Existing Gasoline Loading Facilities at Bulk Terminals*, and Regulation 7.20, *Standard of Performance for New Gasoline Loading Facilities at Bulk Plants*, of the Jefferson County portion of the Kentucky SIP, submitted by the Commonwealth of Kentucky on September 5, 2019. The amendments replace the requirement for tank trucks being loaded at bulk terminals and plants to possess a valid Kentucky pressure vacuum test sticker with specific vapor tightness testing and recordkeeping requirements and make minor, non-substantive changes as discussed in section II. These SIP revisions update the current SIP-approved versions of Regulation 6.21 (Version 2) and Regulation 7.20 (Version 2) to Version 3.

### **II. EPA's Analysis of the Revisions**

The District's September 5, 2019, SIP revisions include changes to Regulation 6.21 and Regulation 7.20 related to standards for existing gasoline loading facilities at bulk terminals and standards for new gasoline loading facilities at bulk plants, respectively, as described below.

The District notes that it enacted these regulations to control volatile organic compound emissions from gasoline loading facilities and that Regulations Parts 6 and 7 apply more stringent standards to a broader cross-section of sources than the Federal New Source Performance Standards (NSPS).<sup>1</sup>

The District has revised Regulation 6.21 and Regulation 7.20 to discontinue the practice of requiring gasoline transport vehicles to display a Kentucky pressure vacuum test sticker. Specifically, the revisions to Regulation 6.21 and Regulation 7.20 delete the text of subsection 3.6.4 and subsection 3.11.1, respectively, which provide that no owner or operator of a bulk gasoline terminal or plant subject to these regulations may allow a tank truck or trailer to be loaded with gasoline unless the vehicle has "a valid Kentucky pressure-vacuum test sticker as required by Regulation 6.37 attached and visibly displayed."<sup>2</sup> This requirement is replaced with specific procedures for assuring that tank trucks and their associated vapor collection systems have passed the required vapor tightness test on an annual basis. New subsection 3.6.4.1 of Regulation 6.21 and subsection 3.11.1.1 of Regulation 7.20 state that no owner or operator of an existing bulk gasoline terminal or a new bulk gasoline plant shall allow loading unless the gasoline tank truck and its vapor collection system has demonstrated a pressure change within specific parameters.

The SIP revision also adds a new subsection 3.6.4.2 of Regulation 6.21 and a new subsection 3.11.1.2 of Regulation 7.20 to specify the testing procedures that must be used to

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<sup>1</sup> 40 CFR part 60, subpart XX, is the Federal NSPS containing standards of performance for bulk gasoline terminals.

<sup>2</sup> The District has no record of ever having created "Regulation 6.37" (*see* email from Byron Gary, Louisville Air Pollution Control District, to Sarah LaRocca, EPA Region 4, March 23, 2020), and the Jefferson County portion of the Kentucky SIP does not contain "Regulation 6.37." The District's September 5, 2019, revisions rectify this discrepancy by removing the references to the non-existent "Regulation 6.37" and adding new provisions (at subsection 3.6.4 for Regulation 6.21 and subsection 3.11.1 for Regulation 7.20) containing detailed, updated procedures that explicitly state the vapor tightness and recordkeeping requirements.

assure compliance with the new vapor tightness requirements. As approved for incorporation into the SIP, these subsections require that EPA Method 27, “Determination of Vapor Tightness of Gasoline Delivery Tank Using Pressure Vacuum Test,” as specified in 40 CFR part 60, appendix A, on July 1, 1991, shall be used to determine compliance with subsection 3.6.4.1 of Regulation 6.21 and subsection 3.11.1.1 of Regulation 7.20.<sup>3</sup> The new subsections also require the owner or operator of a tank truck being loaded at an affected facility to have this vapor tightness test completed annually and to maintain all testing records (i.e., test data, date of testing, identification of tank truck, type of repair, retest data and date) for two years after the date of testing, and to make such records available upon request by the District. EPA notes that the District’s revised tank truck vapor tightness standards, testing procedures, and recordkeeping requirements as approved for incorporation into the SIP are consistent with the Commonwealth of Kentucky’s requirements at 401 KAR 63:031, *Leaks from gasoline tank trucks*, and also with EPA’s requirements applicable to gasoline cargo tanks under 40 CFR part 60, subpart XX, *Standards of Performance for Bulk Gasoline Terminals* (see 40 CFR 60.505(b)) and 40 CFR part 63, subpart BBBB, *National Emission Standards for Hazardous Air Pollutants for Source Category: Gasoline Distribution Bulk Terminals, Bulk Plants, and Pipeline Facilities* (see 40 CFR 63.11092(f)(1) and 63.11094(b)).

The revisions also include minor changes to Regulation 6.21 and Regulation 7.20. A non-substantive change to Section 1 of Regulation 6.21 clarifies that the rule applies to each affected facility that was either existing or had a construction permit issued on or before June 13, 1979.<sup>4</sup> The non-substantive changes to Regulation 7.20 clarify that the rule applies to each affected facility which commenced construction, modification, or reconstruction after June 13,

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<sup>3</sup> EPA is not acting on the phrase “or an alternate procedure approved by the District” in the District’s new subsection 3.6.4.2 of Regulation 6.21 and subsection 3.11.1.2 of Regulation 7.20. The District has withdrawn this phrase from the SIP revision. The withdrawal letter is included in the docket for this action.

<sup>4</sup> The prior version of the rule states that it applies to “each affected facility which was in being or had a construction permit issued by the District before June 13, 1979.” “Affected facility” is defined in Section 2.1 of the rule as “facilities at a bulk gasoline terminal for loading gasoline into tank trucks, trailers, railroad tank cars, or other mobile, non-marine vessels.”

1979;<sup>5</sup> remove language in subsection 3.11.3 such that a pressure measuring device is no longer required to be supplied by the District; and renumber subsections within Section 3.

Because these rule revisions will not allow an increase in air pollutant emissions, EPA has determined that these changes will not interfere with attainment or maintenance of the NAAQS, reasonable further progress, or any other applicable requirement of the CAA.

In a notice of proposed rulemaking (NPRM) published on January 22, 2021 (86 FR 6589), EPA proposed to approve changes to the Jefferson County portion of the Kentucky SIP, provided on September 5, 2019. The January 21, 2021, NPRM provides additional detail regarding the background and rationale for EPA's action. Comments on the NPRM were due on or before February 22, 2021. One comment was received on the NPRM and is addressed below.

### **III. Response to Comments**

EPA received one comment on its January 21, 2021, NPRM. The comment is provided in the docket for this final action. EPA has summarized and responded to the comment below.

*Comment:* The commenter “agree[s] with th[e] proposed rule because the results will be beneficial to protecting air quality” and states that the rule would be impactful because automobile emissions are a large contributor to air pollution. The commenter further states that “requiring tank trucks to have this vacuum stickers will help ensure that less volatile emissions will be released into the air” and that “tank drivers would have to update this sticker annually, ensuring that the automobiles stay up to date with regulations.”

*Response:* Although the commenter expresses agreement with the proposed rule, they are mistaken regarding the nature of the action. As discussed throughout the NPRM, the revisions to Regulation 6.21 and Regulation 7.20 remove the requirement for gasoline transport vehicles to display a Kentucky pressure vacuum test sticker in Jefferson County. The revisions replace the sticker requirement with specific procedures for assuring that tank trucks and their

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<sup>5</sup> The prior version of the rule states that it applies to “each new affected facility which is commenced after the June 13, 1979.” “Affected facility” is defined in Section 2.1 of the rule as “a bulk gasoline plant.”

associated vapor collection systems have passed the required vapor tightness test on an annual basis. The revisions also require the owner or operator of a tank truck being loaded at an affected facility to maintain all testing records for two years after the date of testing and to make such records available upon request by the District. EPA is approving the revisions because the new testing requirements are as stringent as those that would have been required to obtain a pressure vacuum test sticker, and therefore will not allow an increase in air pollutant emissions, and because the revisions are otherwise consistent with the CAA.

#### **IV. Incorporation by Reference**

In this document, EPA is finalizing regulatory text that includes incorporation by reference. In accordance with requirements of 1 CFR 51.5, EPA is finalizing the incorporation by reference of Louisville Metro Air Pollution Control District Regulation 6.21, *Standard of Performance for Existing Gasoline Loading Facilities at Bulk Terminals*, Version 3, and Regulation 7.20, *Standard of Performance for New Gasoline Loading Facilities at Bulk Plants*, Version 3, effective June 19, 2019, with the exception of the phrase “or an alternate procedure approved by the District” in Regulation 6.21, subsection 3.6.4.2 and Regulation 7.20, subsection 3.11.1.2. The changes to these rules replace a requirement for gasoline tank trucks to possess valid pressure vacuum test sticker with a requirement for specific vapor tightness testing and recordkeeping procedures, clarify rule applicability, and remove language stating that a pressure measuring device will be supplied by the District. EPA has made, and will continue to make, these materials generally available through [www.regulations.gov](http://www.regulations.gov) and at the EPA Region 4 office (please contact the person identified in the **FOR FURTHER INFORMATION CONTACT** section of this preamble for more information). Therefore, these materials have been approved by EPA for inclusion in the State implementation plan, have been incorporated by reference by EPA into that plan, are fully federally enforceable under sections 110 and 113 of the CAA as of

the effective date of the final rulemaking of EPA's approval, and will be incorporated by reference in the next update to the SIP compilation.<sup>6</sup>

## **V. Final Action**

EPA is approving the revisions to Regulation 6.21, *Standard of Performance for Existing Gasoline Loading Facilities at Bulk Terminals*, Version 3, and Regulation 7.20, *Standard of Performance for New Gasoline Loading Facilities at Bulk Plants*, Version 3 of the Jefferson County portion of the Kentucky SIP, submitted on September 5, 2019, as discussed above.

## **VI. Statutory and Executive Order Reviews**

Under the CAA, the Administrator is required to approve a SIP submission that complies with the provisions of the Act and applicable Federal regulations. *See* 42 U.S.C. 7410(k); 40 CFR 52.02(a). Thus, in reviewing SIP submissions, EPA's role is to approve state choices, provided that they meet the criteria of the CAA. This action merely approves state law as meeting Federal requirements and does not impose additional requirements beyond those imposed by state law. For that reason, this action:

- Is not a significant regulatory action subject to review by the Office of Management and Budget under Executive Orders 12866 (58 FR 51735, October 4, 1993) and 13563 (76 FR 3821, January 21, 2011);
- Does not impose an information collection burden under the provisions of the Paperwork Reduction Act (44 U.S.C. 3501 *et seq.*);
- Is certified as not having a significant economic impact on a substantial number of small entities under the Regulatory Flexibility Act (5 U.S.C. 601 *et seq.*);
- Does not contain any unfunded mandate or significantly or uniquely affect small governments, as described in the Unfunded Mandates Reform Act of 1995 (Public Law 104-4);

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<sup>6</sup> *See* 62 FR 27968 (May 22, 1997).

- Does not have federalism implications as specified in Executive Order 13132 (64 FR 43255, August 10, 1999);
- Is not an economically significant regulatory action based on health or safety risks subject to Executive Order 13045 (62 FR 19885, April 23, 1997);
- Is not a significant regulatory action subject to Executive Order 13211 (66 FR 28355, May 22, 2001);
- Is not subject to requirements of Section 12(d) of the National Technology Transfer and Advancement Act of 1995 (15 U.S.C. 272 note) because application of those requirements would be inconsistent with the CAA; and
- Does not provide EPA with the discretionary authority to address, as appropriate, disproportionate human health or environmental effects, using practicable and legally permissible methods, under Executive Order 12898 (59 FR 7629, February 16, 1994).

The SIP is not approved to apply on any Indian reservation land or in any other area where EPA or an Indian tribe has demonstrated that a tribe has jurisdiction. In those areas of Indian country, the rule does not have tribal implications as specified by Executive Order 13175 (65 FR 67249, November 9, 2000), nor will it impose substantial direct costs on tribal governments or preempt tribal law.

The Congressional Review Act, 5 U.S.C. 801 *et seq.*, as added by the Small Business Regulatory Enforcement Fairness Act of 1996, generally provides that before a rule may take effect, the agency promulgating the rule must submit a rule report, which includes a copy of the rule, to each House of the Congress and to the Comptroller General of the United States. EPA will submit a report containing this action and other required information to the U.S. Senate, the U.S. House of Representatives, and the Comptroller General of the United States prior to publication of the rule in the *Federal Register*. A major rule cannot take effect until 60 days after it is published in the *Federal Register*. This action is not a “major rule” as defined by 5 U.S.C. 804(2).



Under section 307(b)(1) of the CAA, petitions for judicial review of this action must be filed in the United States Court of Appeals for the appropriate circuit by **[INSERT DATE 60 DAYS AFTER DATE OF PUBLICATION IN THE FEDERAL REGISTER]**. Filing a petition for reconsideration by the Administrator of this final rule does not affect the finality of this action for the purposes of judicial review nor does it extend the time within which a petition for judicial review may be filed, and shall not postpone the effectiveness of such rule or action. This action may not be challenged later in proceedings to enforce its requirements. *See* section 307(b)(2).

## **List of Subjects in 40 CFR Part 52**

Environmental protection, Air pollution control, Incorporation by reference, Ozone, Volatile organic compounds.

Dated: March 5, 2021.

John Blevins,

*Acting Regional Administrator,*

*Region 4.*

For the reason stated in the preamble, the EPA amends 40 CFR part 52 as follows:

## **PART 52 – APPROVAL AND PROMULGATION OF IMPLEMENTATION PLANS**

1. The authority citation for part 52 continues to read as follows:

Authority: 42 U.S.C. 7401 *et seq.*

### **Subpart S – Kentucky**

2. Section 52.920(c), Table 2, is amended under “Reg 6 – Standards of Performance for Existing Affected Facilities” by revising the entry for “6.21” and under “Reg 7 – Standards of Performance for New Affected Facilities” by revising the entry for “7.20” to read as follows:

#### **§ 52.920 Identification of plan.**

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(c) \* \* \*

**TABLE 2 – EPA-APPROVED JEFFERSON COUNTY REGULATIONS FOR KENTUCKY**

<b>Reg</b>	<b>Title/subject</b>	<b>EPA approval date</b>	<b>Federal Register notice</b>	<b>District effective date</b>	<b>Explanation</b>
**	*	*	*	*	*
<b>Reg 6–Standards of Performance for Existing Affected Facilities</b>					
**	*	*	*	*	*
6.21	Standard of Performance for Existing Gasoline Loading Facilities at Bulk Terminals	[Insert date of publication in FEDERAL REGISTER]	[Insert citation of publication]	6/19/2019	Except for the phrase “or an alternate procedure approved by the District” in subsection 3.6.4.2.
**	*	*	*	*	*
<b>Reg 7–Standards of Performance for New Affected Facilities</b>					
**	*	*	*	*	*

7.20	Standard of Performance for New Gasoline Loading Facilities at Bulk Plants	[Insert date of publication in FEDERAL REGISTER]	[Insert citation of publication]	6/19/19	Except for the phrase “or an alternate procedure approved by the District” in subsection 3.11.1.2.
**	*	*	*	*	*

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[FR Doc. 2021-05049 Filed: 3/10/2021 8:45 am; Publication Date: 3/11/2021]